

**Case No. 17-71692**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

In re: UNITED STATES OF AMERICA

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UNITED STATES OF AMERICA, *et al.*,  
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF OREGON  
Respondent,

and

KELSEY CASCADIA ROSE JULIANA, *et al.*,  
Real Parties in Interest

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On Petition For Writ of Mandamus In  
Case No. 6:15-cv-01517-TC-AA (D. Or.)

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**REAL PARTIES IN INTEREST'S MOTION FOR PERMISSION  
TO FILE AN OVERLENGTH ANSWER**

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Real Parties in Interest (“Plaintiffs”) respectfully request leave to file an overlength answer to Petitioners’ (“Defendants”) Petition for Writ of Mandamus, Doc. 1-1, (“Petition”), of up to 11,300 words. As explained below and in the attached Declaration of Julia A. Olson (“Olson Decl.”), Plaintiffs do not believe that it is possible to submit an answer that serves this Court, given the issues this Court has ordered Plaintiffs to address and the many other issues raised by the Petitioners’ overlength Petition, without additional words and pages above the limits in Ninth Circuit Rule 21-1(c) and Fed. R. App. P. 21(d)(1). Defendants consent to Plaintiffs’ requested extension to the word limit of up to 11,300 words for their answering brief. Olson Decl. ¶ 5.

Plaintiffs are respectful of the Court’s reasonable preference that filings not exceed word limits established by the rules. However, Plaintiffs have a substantial need to file an overlength answer to respond to Defendants’ Petition, which, by the Court’s permission, exceeded the word limits provided by the rules by over 2,000 words. *Id.* at ¶ 3. The additional topics on which the Court has ordered Plaintiffs to respond, the importance of the full factual background of the discovery phase of this case, and Defendants’ mischaracterizations of Plaintiffs’ legal claims, discovery requests and requests for relief, cannot be adequately addressed within existing page limits, without seriously compromising Plaintiffs’ ability to present the relevant facts and law.

For instance, Plaintiffs' answer must address, at this Court's order, "the status of all current discovery requests," "all pending discovery deadlines," and "any ongoing or expected discovery disputes." Doc. 8 at 2. Plaintiffs cannot adequately address these discovery issues without due detail given Defendants' unsubstantiated and erroneous characterizations of their alleged discovery burdens. Plaintiffs' answer must also address, in accordance with this Court's order, whether their "constitutional challenge to Section 201 of the Energy Policy Act is within the district court's jurisdiction." Doc. 8 at 2. To adequately present this Court with the law governing jurisdiction over this claim and its application to the instant case requires considerably more words than Defendants employed in the single footnote addressing the issue in their Petition. Pet. at 4 n. 1.

Plaintiffs' answer must also explain how Defendants' Petition fails to satisfy *any* of the five factors governing a petition for a writ of mandamus.<sup>1</sup> For example, Plaintiffs must address how Defendants have other means to obtain the relief they request by engaging in the ordinary process of settling any discovery disputes that may arise before the District Court. Plaintiffs must also address how Defendants will not be harmed in a way not correctable on appeal from the denial of their motion to dismiss and how, for this reason, their collateral attack on that denial via

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<sup>1</sup> Where Plaintiffs have addressed these issues previously, Plaintiffs rely on prior briefing in order to reduce the length of briefing submitted to this Court.

their Petition is procedurally improper and not appropriate for the mandamus process.

Defendants challenge nearly every aspect of the District Courts' analysis and conclusions, including those regarding each of the three prongs of standing, Plaintiffs' multiple due process claims, and Plaintiffs' Public Trust Doctrine claim. Defendants also contend that the District Court's order presents separation of powers concerns. To correct Defendants' myriad mischaracterizations of Plaintiffs' claims and Defendants' misstatements and misapplications of the law governing them, Plaintiffs must devote adequate space to present this Court with a full and correct statement of the law and facts.

Plaintiffs have diligently attempted to reduce their answer to fall within the 7,800 word and 30 page limits provided in Ninth Circuit Rule 21-1(c) and Fed. R. App. P. 21(d)(1), but more words and pages are necessary to provide this Court with a brief that is helpful to it in resolving these important legal issues. Olson Decl. ¶ 3. The answer Plaintiffs seek to file consists of fewer than 11,300 words and contains only what Plaintiffs believe is the minimum recitation of facts and analysis of law necessary for this Court to make a fully informed decision on the merits of Defendants' Petition. Any further diminution would substantially reduce the clarity, cohesion, and integrity of presentation necessary for this Court to

consider the important constitutional issues presented in this case within their appropriate context. *Id.* at ¶ 4.

For the foregoing reasons, Plaintiffs respectfully request this Court permit Plaintiffs to file an answer to Defendants Petition of up to 11,300 word.

DATED this 28th day of August, 2017, at Eugene, OR.

Respectfully submitted,

/s/ **Julia Olson**

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**DECLARATION OF JULIA A. OLSON**

I, Julia A. Olson, hereby declare and if called upon would testify as follows:

1. I am an attorney in the above-entitled action and have personal knowledge of the statements made herein.
2. I am one of the attorneys responsible for preparing and filing Plaintiffs' answer to Defendants' Petition for Writ of Mandamus in the above-entitled action.
3. My colleagues and I have performed multiple rounds of edits on Plaintiffs' answer to reduce its length and do not believe in our professional judgment that we could prepare an adequate answer addressing this Court's order and Defendants' petition for writ of mandamus within the current word and page limitations.
4. In my professional opinion, Plaintiffs brief provides the minimum correction of Defendants' characterization of the facts and analysis of law necessary for this Court to make an informed decision on Defendants' Petition. Any further diminution would substantially reduce the clarity, cohesion, and integrity of presentation necessary for this Court to consider the important constitutional issues presented in this case within their appropriate context.
5. On August 28, 2017, I contacted counsel for Defendants for their position on our motion to submit an over-length brief, and counsel for Defendants indicated that they consent to an extension of the word limit of no more than 11,300 words.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 28th, 2017

Respectfully Submitted,

/s/ Julia Olson

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2017, I electronically filed the foregoing Real Parties in Interest's Motion for Permission to File an Overlength Answer and attached Declaration of Julia A. Olson with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. In addition, a courtesy copy of the foregoing brief has been provided via-email to the following counsel:

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Dated: August 28th, 2017

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